

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED UNDER SEAL

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 13-10200-GAO
)	
DZHOKHAR TSARNAEV)	

**MOTION TO COMPEL IMMIGRATION PAROLE
OF DEFENSE WITNESS ELMIRZA KHOZHUGOV**

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully requests that the Court compel the Department of Homeland Security to parole Mr. Elmirza Khozhugov into the United States so that he may testify for the defense. As grounds therefor, defendant states:

1. Elmirza Khozhugov is the estranged husband of Ailina Tsarnaeva, the defendant's sister, and the brother-in-law of Ruslan Tsarni, the defendant's paternal uncle. He is a critical witness for the defense because he actually lived in the Tsarnaev household in Cambridge and has extensive first-hand knowledge of family history and dynamics. Mr. Khozhugov presently works and resides in Almaty, Kazakhstan, where he has formed a new family with children.

2. On March 19, 2015, the Court entered a sealed order [DE 1182] pursuant to 8 C.F.R. § 212.5(b)(4) stating, *inter alia*, that Mr. Khozhugov is a necessary witness at the penalty phase of the trial.

3. Homeland Security has notified the defense that paroled witnesses will be under 24/7 supervision of FBI agents (two agents *per witness*) and subject to electronic monitoring.

4. On April 16, 2015, notwithstanding these extremely restrictive conditions, the defense team received notice that Mr. Khozhugov would be denied parole due to “security concerns.”

5. Subsequently, a member of the defense team was informed that the nature of the “security concerns” was that some type of conflict might arise between Mr. Khozhugov and Ailina Tsarnaeva that could be “embarrassing” to Homeland Security and/or the FBI.

6. These concerns are unfounded for several reasons. First, Ailina Tsarnaeva is not a trial witness, nor is she expected to attend any part of the trial. The likelihood that she would encounter Mr. Khozhugov is very low. Second, years have passed since the 2008 domestic incident between Ms. Tsarnaeva and Mr. Khozhugov, both of whom were very young at the time. They have both since matured substantially and both have now formed new families with children. Third, while Ms. Tsarnaeva previously filed some kind of complaint against Mr. Khozhugov for taking their son from the United States to live with him in Almaty, defense counsel understand that there was no custody order in place that would have prohibited him from doing so. Moreover, defense counsel understand that Ms. Tsarnaeva and Mr. Khozhugov have since reached an amicable agreement regarding custody of their son and hope to formalize that agreement with appropriate authorities when they are able to do so.

7. By e-mail on April 20, 2015, undersigned counsel requested that Homeland Security and/or the FBI reconsider the decision to deny parole to Mr. Khozhugov, explaining why the “security concerns” are misplaced. On April 21, 2015, the defense requested to reconsider was denied. A copy of the e-mail exchange is attached hereto as Exhibit A.

8. Refusal to parole Mr. Khozhugov into the United States to testify violates the defendant’s constitutional rights. *See, e.g., United States v. Filippi*, 918 F.2d 244, 247 (1st Cir. 1990) (holding that failure to assist in obtaining parole for foreign witnesses would violate 5th and 6th Amendments). Accordingly, the Court should compel Homeland Security to parole Mr. Khozhugov into the United States.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys



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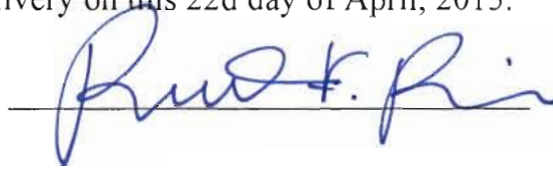
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Certificate of Service

I hereby certify that I have caused a copy of this document to be served upon counsel for the United States by hand delivery on this 22d day of April, 2015.

A handwritten signature in blue ink, appearing to read "Rust K. Rin", is written over a horizontal line.